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THE PRYTANEUM IN THE ATHENIAN AMNESTY LAW

BY GERTRUDE SMITH

On the eve of a national crisis the Athenians were in the habit of passing an amnesty law for the purpose of restoring to full rights of citizenship those who had been condemned to ἀτιμία. Such a law was passed prior to the introduction of Solon's reforms,¹ at the time of the Persian War, and at the end of the Peloponnesian War.² The section of the Solonian law quoted by Plutarch specifies those exempted from the benefits of the amnesty:

ἐπιτίμους εἶναι πλὴν ὅσοι ἐξ Ἀρείου πάγου ἢ ὅσοι ἐκ τῶν ἐφετῶν ἢ ἐκ πρυτανείου καταδικασθέντες ὑπὸ τῶν βασιλέων ἐπὶ φόνῳ ἢ σφαγαῖσιν ἢ ἐπὶ τυραννίδι ἔφευγον ὅτε ὁ θεσμὸς ἐφάνη ὁδε.³

The clause reappears in the decree of Patrocleides which was passed after the battle of Aegospotami in 405 B.C.:

πλὴν ὁπόσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μεινάντων, ἢ ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἢ Δελφινίου ἐδικάσθη ἢ ὑπὸ τῶν βασιλέων, ἢ ἐπὶ φόνῳ τίς ἐστι φυγῇ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις.⁴

This amnesty law is expressly said to be a replica of the amnesty law passed on the eve of the Persian War—*ψηφίσασθαι τὸν δῆμον ταῦτ᾽ ἅπερ ὅτε ἦν τὰ Μηδικά*. The latter was undoubtedly a repetition of the Solonian law. Hence the three laws are substantially the same. Scholars have generally assumed that Plutarch or his ultimate source quoted the law of Solon as he found it, presumably because he gives the number of the axon and the section of the law. On this assumption they have freely used Plutarch to emend Andocides. But it is in accordance with the practice of ancient writers not to quote a document verbatim, but rather to give the substance of it in language

¹ For the dispute about the date of Solon's archonship cf. Linforth, *Solon the Athenian*, pp. 265 ff. Linforth rejects the amnesty law.

² For the literature on the subject of the amnesty law cf. Busolt, *Griechische Geschichte*, II, 159, n. 1.

³ *Solon* 19.

⁴ Andocides i. 78. Cf. Xenophon *Hell.* ii. 2. 11. For both the Andocides and the Plutarch I quote the MSS reading.

which conforms to their own style. Plutarch is no exception to this rule.¹ It is probable, then, that the passage in Andocides is an actual quotation of the law, while the words of Plutarch, as appears from the context,² are in the nature of an exegetical paraphrase rather than a reproduction of the exact text of the law.

Before proceeding to a discussion of the interpretation of the law it is necessary to establish the text.³ Linguistically as the passage stands in Andocides it falls into two parts. There is first a general statement indicating the various groups which are to be excluded from the amnesty. This clause ends with *ὑπὸ τῶν βασιλέων*. The statement in the opinion of the draughtsman is too general. In order to be more specific, he restricts it with a more accurate description of the groups concerned in the form of an alternative clause ending with *σφαγεῖσιν*.⁴ *τυράννοις* indicates a separate class of offenders.⁵

¹ Cf. Flickinger, *Plutarch as a Source of Information on the Greek Theatre*, pp. 10 ff.

² Cf. the remainder of the chapter in question: "This surely proves to the contrary that the council of the Areiopagus was in existence before the archonship and legislation of Solon. For how could men have been condemned in the Areiopagus before the time of Solon, if Solon was the first to give the council of the Areiopagus its jurisdiction? Perhaps, indeed, there is some obscurity in the document, or some omission, and the meaning is that those who had been convicted on charges within the cognizance of those who were Areiopagites and ephetai and prytanes when the law was published, should remain disfranchised, while those convicted on all other charges should recover their rights and franchises. This question, however, my reader must decide for himself."—Perrin's translation, Loeb Classical Library.

³ The text of the passage has been the subject of much discussion. In the second Teubner edition of Andocides (1880) Blass printed the MSS reading without indicating his interpretation. Lipsius (Tauchnitz series, 1888) used Plutarch very freely in emending Andocides and practically rewrote the passage. The emendations of Lipsius were for the most part adopted in the fourth Teubner edition revised by Fuhr (1913).

⁴ The word *σφαγεῖσιν* has generally been understood to refer to wholesale slaughter such as might take place in an attempt on the government similar to that of the followers of Cylon. If it be taken in association with *τυράννοις*, this is the most plausible explanation to give to the word. But *σφαγή* could be dealt with by the homicide courts. The suggestion has been made that *σφαγεῖσιν* was added to *φόνῳ* in an early attempt to distinguish between voluntary and involuntary homicide. But the use of the word in such a technical sense is unparalleled. If such an attempt to distinguish the two kinds of murder was made, it has left no traces in later literature. It looks attractive when we compare the English murder and manslaughter which correspond fairly well to *φόνος* and *σφαγή*.

⁵ The discussion about the identity of the *σφαγείς* and the *τυράννοι* in each of the three periods of the amnesty law is outside the purposes of this paper. For the period of Solon cf. Droysen, *De Demophanti Patroclidis Tisameni populiscitis quae inserta sunt Andocidis orationi περὶ μυστηρίων*. At the time of the Persian War no amnesty law

The two words *σφαγεῖσιν* and *τυράννοις* are dependent on *τίς ἐστι φυγῇ* and *κατεγνώσθη*. Plutarch realized that there were two separate classes of offenders mentioned by the law, as is shown by his grouping together of those who were polluted (*ἐπὶ φόρῳ ἢ σφαγαῖσιν*) and his separation from them of the political offenders¹ by the repetition of *ἐπὶ* with *τυραννίδι*. *ἐδικάσθη* has proved to be a stumbling-block because it apparently has no subject. But *ὅποσα*, the neuter plural, may be supplied as its subject from *ὅποσα* preceding. It may be objected that there is a weakness here, as *ὅποσα* in the preceding clause refers to *ὀνόματα* and here must be used without a noun. But this need occasion no surprise in sixth-century Attic prose. Another difficulty which is easily explained is the MSS reading *ἢ* before *ὑπὸ τῶν βασιλέων*. In old Attic writing the sign which was later used for *η* was merely a sign of aspiration. In this case, then, the letter belonged to *ὑπό*. The phrase *ἢ θάνατος κατεγνώσθη* need cause no difficulty. It refers to those who went into exile rather than face trial, and to unknown murderers judged in the Prytaneum. These criminals were condemned to death in their absence and so were not executed.² The phrase *ἢ Δελφινίου* could not have appeared in the original amnesty law, since in Solon's time the Delphinium was a regular ephetic court and would have been included in the phrase *ἐκ τῶν ἐφετῶν*. It is probable that the mention of the Delphinium is due to a marginal annotation.³ With these

could have been passed without some reference to the Peisistratidae. In the time of Andocides there is no need of excluding tyrants, for there is no instance of individual tyrants during the intervening period. The explanation must be that this section of the amnesty law had become standardized and that Patrocleides repeated it in full in his decree.

¹ A suggestion which does away with the clumsy combination of homicide cases and a political offense in the same sentence is to read *πυρκαϊαῖς* instead of *τυράννοις*. Palaeographically the change is quite possible. Such an emendation yields a sentence which deals entirely with homicide, for cases of arson (*πυρκαϊά*) were always treated as homicide if death resulted. The only difficulty is the fact that it is necessary to suppose that the same error occurred in two totally different sets of MSS. If the emendation is adopted, *σφαγεῖσιν* must be changed to the abstract *σφαγαῖσιν*. Of interest in this connection is the restoration of exiles proclaimed by Alexander the Great in which exception is made only of those who were exiled for sacrilege or homicide (Diodorus xvii. 109; xviii. 8-46)—that is, the only reasons for exclusion are religious.

² Cf. Schreiner, *De corpore iuris Atheniensium*, p. 57.

³ Keil, *Die Solonische Verfassung*, p. 111, has explained the appearance of the phrase in the decree of Patrocleides in the following way. He admits that at the

slight changes the passage is linguistically and institutionally correct. The reconstructed text of the amnesty law should then read as follows:

πλὴν ὅποσα ἐν στήλαις γέγραπται τῶν μὴ ἐνθάδε μινάντων, ἡ ἐξ Ἀρείου πάγου ἢ τῶν ἐφετῶν ἢ ἐκ πρυτανείου ἐδικάσθη ὑπὸ τῶν βασιλέων, ἢ ἐπὶ φόνῳ τίς ἐστι φυγῇ ἢ θάνατος κατεγνώσθη ἢ σφαγεῦσιν ἢ τυράννοις.

It may be translated:

Except whatever names have been written on stelae of those who have not remained here or those upon whom sentence has been passed by the Areopagus or the Ephetae or the Prytaneum under the chairmanship of the kings, that is to say, if a verdict of exile or death has been rendered for murder, manslaughter, or tyranny.

The identity of the courts mentioned in the law has been a matter of much dispute. Much of the discussion regarding the Areopagus was due to Plutarch's statement² that no Areopagus existed before the time of Solon; but it has been rendered obsolete by the statement of Aristotle from which it may be inferred that the Areopagus existed before the time of Draco, and, if the Draconian constitution be accepted, also during his time.³ The reference is then

time of Solon the Delphinium would have been included in the phrase τῶν ἐφετῶν. But the fact that it is especially named in the decree of Patrocleides indicates that it must have undergone a change which differentiated it from the Palladium and the Phreatto. This special mention of the Delphinium, Keil assumes, is the first evidence for the replacement of the Ephetae by heliastic judges. So, according to his view, the psephism distinguishes the fifty-one Ephetae at the Palladium and the Phreatto and the heliastic judges at the Delphinium.

¹ There is, so far as I am aware, no parallel for the use of ἡ which I have suggested. εἰ, an easy emendation, yields similar sense and more tolerable Greek. In view of the attention the passage has attracted, one wonders that so obvious an emendation has not been suggested before.

² For the question as to whether Plutarch had read the *Ath. Pol.* cf. G. H. Stevenson, "Ancient Historians and Their Sources," *Jour. Philol.* XXXV, 219 ff.

³ *Ath. Pol.* iii. 6; iv. 4. One theory is founded on the belief that Draco instituted the Ephetae who took over the judicial functions of the Areopagus. Cf. Gilbert, *Constitutional Antiquities*, p. 122. Plutarch's explanation of an ellipsis, so that the law means "cases like those which in Solon's time were tried by the Areopagus" has met with some favor. Cf. Lange, "Die Epheten und der Areopag vor Solon," *Abhandl. d. k. sächs. Gesellschaft der Wissenschaften*, 1879, p. 223. Philippi, *Der Areopag und die Epheten*, pp. 217 ff., cf. also *Rh. Mus.*, XXIX (1874), 6, introduced a new element into the discussion by identifying the Areopagus here mentioned with the court of the 300 who tried the Alcmaeonidae after the revolt of Cylon and the slaughter of his followers. Lipsius follows this view. Lelyveld, *De infamia jure attico commentatio* (Amsterdam, 1835), p. 57, understands the court of the Areopagus as known in historical times.

to the Areopagus acting as a murder court, while the phrase ἐκ τῶν ἐφετῶν refers to the three courts—the Palladium, the Delphinium, and the Phreatto in which the judges were the fifty-one Ephetae. In the time of Andocides the words could not have been understood otherwise. Three theories have been advanced in regard to the functions and composition of the court called Prytaneum. The first theory is based chiefly on the order of words in the decree. The first offenses (φόνος and σφαγή) were naturally assigned to the first-named judicial bodies, the Areopagus and the Ephetae. The Prytaneum alone, then, is left as the tribunal which dealt with tyrants. The statement of Herodotus¹ that at the time of the Cylonian rebellion the Prytanies of the Naucraries were in charge of affairs at Athens has given rise to the view that the Prytaneum court was composed of these Prytanies, who exercised judicial functions in the extraordinary case of a revolution although they were ordinarily an administrative body. Meyer is the latest exponent of this theory:

Freilich stand ihnen [the Areopagites] als Gegengewicht der Rath im Prytaneion gegenüber, der aus den Vorstehern der 48 Naukrarien, der Unterabtheilungen der Phylen, mit den Phylenkönigen an der Spitze, gebildet war. Ihm präsidirte, wie es scheint, in der Regel der Archon, der im Prytaneion sein Amtlocal hatte (Arist. *pol. Ath.* iii. 5), bei Gerichtssitzungen aber der König.²

This council he makes identical with the Prytanies mentioned by Herodotus and also with the court of the Prytaneum mentioned in the amnesty law.

The defenders of the second theory likewise hold that cases of treason came before a court at the Prytaneum. But this court they maintain to have been composed of the nine archons. Lipsius, who is the last to discuss the amnesty law, insists that the nine archons would form a natural body for dealing with political offenses.³

¹ v. 71.

² *Geschichte des Altertums*, II, 354 ff. Cf. Schöll, "Die Speisung im Prytaneion zu Athen," *Hermes*, VI (1872), 21; Müller, *Eumenides*, p. 157, n. 13. Gilbert, *Constitutional Antiquities*, p. 123, n. 2 (cf. p. 125), identifies the judges of the Prytaneum court with the Prytanies or standing committee of Draco's new council.

³ *Das attische Recht*, p. 24. Cf. Philippi and Lange, *op. cit.*

In his opinion, it was probably not an extraordinary, but a permanent court. Although the court was under the presidency of the king archon, the Prytaneum, the seat of the archon, was the normal place for this body to meet.

Lipsius pays no attention to a third theory, although it had been suggested by earlier writers—that is, that the reference is merely to the ceremonial court at the Prytaneum, still in existence in the time of Aristotle, which sat in judgment on unknown murderers and inanimate objects which had caused the death of human beings.¹

With regard to the first of these theories, even if Herodotus' statement is accepted, there is no evidence that these Prytanies acted as a judicial body. Herodotus merely says that the Prytanies of the Naucraries, *ὅπερ ἔνεμον τότε τὰς Ἀθήνας*, caused the adherents of Cylon to leave the altar at which they were suppliants by promising to spare their lives. They were to have undergone trial,² but there is nothing to show that the *πρυτάνεις τῶν ναυκράρων* were to act as their judges. Furthermore, the statement of Herodotus that the Prytanies were at this time in control of affairs at Athens is wholly unsubstantiated and in fact is tacitly corrected by Thucydides:

But as time passed the Athenians grew weary of the siege and most of them went away, committing the task of guarding to the nine Archons, to whom they also gave full power to settle the whole matter as they might determine to be best;³ *τότε δὲ τὰ πολλὰ τῶν πολιτικῶν οἱ ἐννέα ἄρχοντες ἔπρασσον*.⁴

There is no evidence that the archons as a body acted as a court on this or any other occasion. The language of Thucydides does not imply a trial. Another difficulty is the fact noted, but not explained, by Lipsius that the court of the Prytaneum was under the presidency of the king archon, although it met at the official residence of the archon. So far as our knowledge goes, the jurisdiction of the king archon was always confined to religious matters. It is inconceivable that he should have precedence over the archon in a political trial.

¹ Cf. Lelyveld, *op. cit.*; Verdam, *De senatu Areopagitico*, pp. 18 ff.

² Plutarch *Solon* 12.

³ Translation of Thucydides by C. F. Smith, Loeb Classical Library.

⁴ i. 126.

There is no trace of a court called Prytaneum other than the homicide court.¹ Homicide is the chief topic of the section. Of the five Athenian homicide courts four are mentioned either directly or by implication—the Areopagus and the three ephetic courts, i.e. the Palladium, the Delphinium, and the Phreatto. In this context the Prytaneum must be the fifth homicide court. No legislator would in a list of homicide courts mention the Prytaneum, meaning some other court of the same name but different functions, without distinguishing it specifically from the homicide court. Because of this difficulty it has been suggested that the ceremonial court was originally an important political and judicial body.² Those who hold this theory fail to explain why an important political offense should come before a court which was under the presidency of a purely religious official—the king archon. There is no evidence that the ceremonial court at the Prytaneum ever had political functions of any kind, let alone such an important function as the trial of would-be tyrants.

No more serious political crime could be committed in a Greek community than an attempt to establish a tyranny. The Cylon incident shows, if proof is required, that the Athenians had the normal Greek attitude toward subverters of the government. It is futile to imagine that such a crime would be dealt with by any but the most authoritative body in the city. According to Aristotle this body was the Areopagus:

The Council of the Areopagus had as its constitutionally assigned duty the protection of the laws; but in point of fact it administered the greater and most important part of the government, and inflicted personal punishments and fines summarily upon all who misbehaved themselves.³

¹ The court of the Prytaneum was in operation as a homicide court as early at least as the time of Draco. In describing the action taken by the Thasians against the statue of Theagenes, Pausanias says that herein they followed Draco who in his homicide laws made the provision that an inanimate thing should be banished if it fell on a person and killed him (vi. 11. 6). Draco was, however, probably codifying pre-existing laws, so that the operation of the court may be assumed for a still earlier period.

² Cf. Keil, *op. cit.*

³ *Ath. Pol.* iii. 6 (Kenyon's translation). The passage refers to the period before the time of Draco.

Apparently all criminal matters were in the hands of the Areopagus. He says elsewhere that the Areopagus in the time of Solon dealt with those who tried to overthrow the government:

Solon assigned to the Areopagus the duty of superintending the laws so that it continued as before to be the guardian of the constitution in general. It kept watch over the citizens in all the most important matters and corrected offenders, having full powers to inflict either fines or personal punishment. The money received in fines it brought up into the Acropolis without assigning the reason for the punishment. It also tried those who conspired for the overthrow of the state, Solon having enacted a process of impeachment to deal with such offenders.¹

In 462 B.C., according to the account given by Aristotle, Themistocles expected to be tried for treason before the Areopagus.² To this expectation was due his share in the overthrow of the power of the Areopagus.³ After the battle of Chaeronea the Areopagus arrested and put to death (λαβούσα ἀπέκτεινε) political wrongdoers.⁴ If, then, as seems beyond question, the Areopagus dealt with subverters of the established order, there is no need to posit a court at the Prytaneum other than the homicide court. Would-be tyrants were tried by the Areopagus.

Several theories have been advanced with regard to the identity of "the kings." Some scholars have construed the phrase ὑπὸ τῶν βασιλέων solely with ἐκ πρυτανείου and hold that it has no reference to the other courts named.⁵ According to this interpretation the reference is to the king archon and the *phylobasileis* who composed the ceremonial court of the Prytaneum. While not impossible, this theory seems improbable in view of the language of the homicide laws of Draco where the same phrase is used of the court of the Palladium.⁶ If the words are understood to refer to all of the courts named, there are two theories which must be considered. Lipsius explained the plural number by supposing that the *phylobasileis* were associated with the king archon at the preliminary investigation and also at the actual trial in all of the murder courts. After

¹ *Ath. Pol.* viii. 4.

² *Ath. Pol.* xxv.

³ Cf. the reference to this story in the argument to the *Areopagiticus* of Isocrates in Dindorf's edition of the scholia on Aeschines and Isocrates, p. 111.

⁴ *Lycurgus Con. Leocratem* 52.

⁵ Cf. Verdam, *op. cit.*

⁶ *CIA*, I, 61.

Cleisthenes the *phyllobasileis* had a very shadowy existence, and the real oversight lay in the hands of the king. Droysen¹ interprets the phrase as referring merely to all of the king archons who up to the time of Solon had presided over the homicide courts. If, he says, other kings were meant who had charge of judgment ἐκ πρυτανείου, Solon would have had to specify these. In view of the lack of evidence for either theory it is impossible to decide the question with finality. Droysen's interpretation, however, seems preferable since a passage of Antiphon would seem to indicate that in his time the *archon basileus* alone was the presiding officer at the murder courts and at the preliminary investigation.² If this is the case, it seems highly improbable that in the redaction of the homicide laws of Draco made in 409–8 B.C. ὑπὸ τῶν βασιλέων would refer to other kings in addition to the *archon basileus*. That only the king archon is meant might be inferred also from Aristotle's account of the duties of that official.³

The amnesty law, then, specifies those wrongdoers who are to be excluded from reinstatement because they have been exiled by any one of the five murder courts for homicide or by the Areopagus for an attempt on the government. The Areopagus is thus mentioned in two capacities, as a homicide tribunal and as the court before which a grave political offense was tried.⁴ Four of the murder courts were under the presidency of the king archon, while the Prytaneum had as its presiding officers the king archon and the *phyllobasileis*.

UNIVERSITY OF CHICAGO

¹ *Op. cit.*

² vi. 42.

³ *Ath. Pol.* lvii. Sauppe offers a very curious explanation of the kings. The *phyllobasileis* must be understood who had jurisdiction over involuntary homicide. This crime was judged in the Palladium. Therefore, since no mention is made of the Palladium either in the law of Solon or in the decree of 404 B.C., the phrase must refer to the Palladium, and the following words, ἐπὶ φόνῳ τις ἐστὶ φύγη, apply to involuntary homicide. In order to make this explanation plausible, Sauppe retains ἦ before ὑπὸ τῶν βασιλέων and deletes ἦ before ἐπὶ φόνῳ. The remainder of the decree refers to decisions made by the heliastic courts concerning civil strife and would-be tyrants. *Symbolae ad emendandos oratores atticos additae sunt* (Göttingen, 1874).

⁴ Stahl, *Rh. Mus.*, XLVI (1891), 250, 481, contended that the Areopagites judged cases of tyranny, but for this purpose sat in the Prytaneum. Verdam, *op. cit.*, took exception to this view and sees in the mention of the Areopagus merely a court which sat at the Areopagus for the trial of a political offense. In his opinion there is no reference to the Areopagus as a murder court.